

Matawan Police Department

PROVIDING A SAFE COMMUNITY SINCE 1926



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Early Intervention System (EIS)

By the Order of:

Chief Thomas J. Falco Jr.

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Monmouth County Uniform Policy--Early Intervention System.

New Jersey Office of Attorney General Directives (EIS)

Supporting Forms:

Supersedes Order:

General Order 21-002 (Early Warning System)

Distribution Group:

All sworn members

Special Instructions:

This order shall replace the agency's "Early Warning Sysytem" order in its entirety.

Revision History

Date	Section	Description	Date	Section	Description

I. PURPOSE:

The purpose of this policy is to establish guidelines and procedures for Matawan Police Department to follow in establishing an early intervention system for its agency personnel.

II. POLICY:

It is the policy of the Matawan Police Department to implement and utilize an early intervention system for tracking and reviewing incidents of risk and providing timely intervention consistent with New Jersey Attorney General Law Enforcement Directive 2018-3, "Statewide Mandatory Early Warning System."¹

III. EARLY INTERVENTION SYSTEM

A. PURPOSE OF EARLY INTERVENTION

An early intervention system is designed to detect patterns and trends before the conduct escalates into more serious problems. Employees must understand that the early intervention system is not identical to the disciplinary process. Although it is possible that disciplinary action may be taken as the result of evidence that rules and regulations were violated, this is not the sole or even primary intent of the system. The primary intent of an early intervention system is to address potential problems through the use of appropriate management and supervisory strategies before formal discipline is warranted.

1. Performance Indicators

Many different measures of employee performance (actions or behaviors) may be regularly examined for patterns or practices that may indicate potential problems. The following performance indicators shall be included in all early intervention systems, but may also be supplemented based upon the unique characteristics of the department and the community it serves:

- a. Internal Affairs complaints against the officer, whether initiated by another officer or by a member of the public;
- b. Civil actions filed against the officer;

¹ By memo dated December 4, 2019, the Attorney General announced a statewide transition from an "Early Warning System" to an "Early Intervention System" and that his office was in the process of developing a proposal for a new statewide system. Accordingly, this revised policy uses the term "Early Intervention System".

- c. Criminal investigations of or criminal complaints against the officer;²
- d. Any use of force by the officer that is formally determined or adjudicated (for example, by internal affairs or a grand jury) to have been excessive, unjustified, or unreasonable;
- e. Domestic violence investigations in which the officer is an alleged subject (regardless of whether or not a complaint or a temporary or final restraining order has been issued);
- f. An arrest of the officer, including on a driving under the influence charge;
- g. Sexual harassment claims against the officer;
- h. Vehicular collisions involving the officer that are formally determined to have been the fault of the officer;³
- i. A positive drug test by the officer;
- j. Cases or arrests by the officer that are rejected or dismissed by a court;
- k. Cases in which evidence obtained by an officer is suppressed by a court;
- l. Insubordination by the officer;
- m. Neglect of duty by the officer;
- n. Unexcused absences by the officer; and
- o. Any other indicators, as determined by the agency's Chief Executive.

At a minimum, the Matawan Police Department Early Intervention System shall provide that three separate instances of performance indicators (as listed above) within any twelve-month period will trigger the Early Intervention System review process. If one incident triggers multiple performance indicators, that incident shall not be double or triple-counted, but instead shall count as only one performance indicator.

² If Early Intervention System notification to the officer could jeopardize an ongoing criminal investigation, the County Prosecutor may in his or her discretion permit delayed notification to the officer or delayed initiation into the Early Intervention System review process.

³ This performance indicator refers to on-duty vehicular collisions.

2. The EIS Review Process

The EIS review process shall be twelve-months. This period shall be calculated beginning on the date of the performance indicator (the third performance indicator in a twelve-month period) that triggers the EIS review process.

For example, if an officer has three separate performance indicators in January, February and April 2021, he/she triggers the EIS review process upon the third performance indicator in April 2021 for a period of twelve months, thus through April of 2022. Each additional performance indicator that occurs during the twelve-month EIS review process extends the twelve-month period and triggers amended remedial action. Thus, if that same officer has another performance indicator in November of 2021, he will continue to be under EIS review until November of 2022 (as opposed to April of 2022). MCPO shall be notified when the EIS review process is initially triggered (upon the third performance indicator or less if determined by the Chief Executive), and shall be notified if additional performance indicators occur during the twelve-month EIS review process that trigger amended remedial action.

To come off of the EIS review process, the officer must have a twelve-month period of no performance indicators. Thus, if this same officer in the example above had no performance indicators between November of 2021 and November of 2022, the EIS review process would be concluded. Should that officer have performance indicators again in March, April and June of 2023, the EIS review process would be triggered again and the MCPO must be notified accordingly.

B. ADMINISTRATION AND TRACKING

1. Internal Affairs and Supervisory Officers

The Early Intervention System should primarily be the responsibility of the Matawan Police Department's Office of Professional Responsibility (Internal Affairs Unit). However, the Chief of Police has the responsibility of assigning personnel to this function. In addition, supervisory officers in the subject officer's chain of command should be directly involved in any Early Intervention System review process and may initiate the early intervention process based upon his/her own observations. An employee's first line supervisor is usually the first member of the Matawan Police Department to encounter and document specific incidents that affect an employee's performance. It is essential for the supervisor to speak with the employee, document these incidents and report findings to the appropriate commander and if warranted, the Office of Professional Responsibility (Internal Affairs Unit). The success of this system relies heavily on the first line supervisor's participation and involvement. Emphasis should be

placed on anticipating employee problems before it results in improper performance or conduct.

2. Tracking System

Matawan Police Department shall adopt a tracking system to enable the department to identify officers who display the requisite number of performance indicators necessary to trigger the Early Intervention System review process. The tracking system utilized shall be determined by the Office of Professional Responsibility (Internal Affairs Unit). The system may be a manual-type audit or may be conducted via electronic software.

3. Audit of Early Intervention System Every Six Months

At least every six months (i.e., twice per year), personnel assigned to manage the Early Intervention System shall audit the Matawan Police Department's tracking system and records to assess the accuracy and efficacy of the tracking system and to determine if an employee has the emergence of a pattern, practice or trend of inappropriate behavior or misconduct.

4. Review of Officer's History Upon Receiving New Complaint

Personnel assigned to manage the Early Intervention System shall conduct a review of an individual officer's history any time a new complaint is received. Using this information and their experience, personnel assigned to manage the Early Intervention System may be able to identify officers who may need remedial/corrective intervention and may be able to address any issues with the officer's immediate supervisor even before such is indicated by the Early Intervention system-wide review.

5. Documents and Reports

Supervisors shall forward all documentation as required by Matawan Police Department's written directives established to assist in any audit or review conducted under the Early Intervention System, for example, police reports, use of force reports, vehicle pursuit reports, attendance records, etc.

C. REMEDIAL/CORRECTIVE INTERVENTION

1. Types of Remedial or Corrective Intervention

Once an officer has displayed the requisite number of performance indicators

necessary to trigger the Early Intervention System, supervisory or command personnel shall initiate remedial/corrective intervention to correct/address the officer's behavior.⁴ Personnel assigned to the Early Intervention System and the officer's supervisor shall review the information provided by the early warning system along with any other relevant information from agency records for the purpose of initiating a course of intervention designed to correct/interrupt the emerging pattern, practice or trend. Remedial/corrective intervention may include, but is not limited to:

- a. Training or re-training;
- b. Counseling;
- c. Intensive supervision;
- d. Fitness for duty examination;
- e. Employee assistance program (EAP) referral, when warranted and if available; and
- f. Any other appropriate or corrective action.

2. Documenting Remedial or Corrective Action Taken

When remedial/corrective intervention has been undertaken, the Chief of Police shall ensure that such actions are documented in writing. If the remedial/corrective intervention is a training program, attendance and successful completion of that program should be noted in the employee's training record. If a supervisor has initiated remedial/corrective intervention, personnel assigned to the Early Intervention System shall be formally notified of such efforts. This information shall be documented and appropriate copies forwarded to the Office of Professional Responsibility (Internal Affairs Unit) for filing. In any instance where remedial/corrective intervention is taken pursuant to the Early Intervention System, no entry should be made in the employee's formal personnel file, unless the action results in a sustained internal affairs investigation.

3. "False Positive" Triggers

If the Early Intervention System review process indicates that a "false positive" has been returned, that conclusion should be documented and, in those instances, remedial or corrective action is not required. A "false positive" is a scenario where the Early Intervention System is technically triggered; however, remedial or corrective action is not warranted. For example, per AG Directive 2018-3, the Early

⁴ It should be noted that an agency may initiate remedial or corrective action in response to an officer's behavior at any time, regardless of the EIS being formally triggered. This is something that many good law enforcement leaders already do when they identify an area where an officer

Intervention System is triggered by three internal affairs complaints against the officer in a twelve-month period, regardless of whether or not those complaints have merit and are sustained. An officer who is the subject of three such complaints who is exonerated, or where the complaints are deemed unfounded or not sustained, need not be subject to remedial or corrective action unless the agency deems such appropriate.

D. THE EARLY INTERVENTION SYSTEM AND INTERNAL AFFAIRS INVESTIGATIONS/DISCIPLINE

The Early Intervention System is focused on corrective action to remediate the officer's behavior and to provide assistance to the officer. It does not address disciplinary actions that might be warranted against an officer. Some situations may trigger the Early Intervention System; some situations may trigger an internal affairs investigation; and some situations may trigger both.

If an officer has violated the Matawan Police Department's Rules and Regulations, or written directives, an internal investigation should be commenced. Any disciplinary actions that may result—to include the decision to suspend or terminate—remain within the purview of the Chief of Police (and the Appropriate Authority) after a completed investigation by the internal affairs function, and may be imposed in accordance with existing internal affairs guidelines and applicable law, separate from and independent of the Early Intervention System.

Internal disciplinary action, remedial/corrective intervention, and fitness for duty examinations are not mutually exclusive and should be jointly pursued if and when appropriate.

The decision to charge an officer with criminal conduct, if applicable, remains within the purview of the Monmouth County Prosecutor's Office, and is also separate and apart from the Early Intervention System.

E. PUBLIC ACCESSIBILITY AND CONFIDENTIALITY

1. Website Postings and Public Requests

a. Early Intervention Policies

All early intervention policies adopted by law enforcement agencies shall be made available to the public upon request and shall be published on the agency's website.

b. Annual Reports from MCPO to Attorney General

Annual reports from the County Prosecutors to the Attorney General shall also be made available to the public upon request and shall be posted on the agency's website.

may need additional support, training or guidance. AG Directive 2018-3, however, states that remedial or corrective action "shall" be initiated when an officer displays the requisite number of

performance indicators necessary to trigger the Early Intervention System review process.

2. Confidential Documents/Information

a. Documents Created/Submitted under the Early Intervention System

All written reports created or submitted pursuant to this policy and Attorney General Law Enforcement Directive 2018-3 that identify specific officers are confidential and not subject to public disclosure. These documents have the same confidential status as internal affairs documents and are subject to the same disclosure and retention regulations and guidelines.

b. Exception for Law Enforcement Applicants to Other Agencies

If an officer who is or has been the subject of the Early Intervention System review process applies to or accepts employment at a different law enforcement agency, it is the responsibility of the Office of Professional Responsibility to notify the subsequent employing law enforcement agency of the officer's Early Intervention System review process history and outcomes. Upon request, this agency shall share the officer's Early Intervention System review process files with the subsequent employing agency.

IV. MONMOUTH COUNTY PROSECUTOR'S OFFICE NOTIFICATIONS

A. LIST OF MANDATORY NOTIFICATIONS

The following require mandatory notification to the Monmouth County Prosecutor's Office under this Early Intervention System:⁵

1. Officer has Triggered Early Intervention System Review Process:

An officer has triggered the Early Intervention System review process due to three separate instances of performance indicators within any twelve-month period will trigger the Early Intervention System review process. In such instance, the agency shall:

- a. Make a confidential written notification to the Professional Responsibility Unit and Bias Crimes Unit (PRU) of the MCPO including the identity of the officer, the nature of the triggering performance indicators, and the planned remedial program. Upon completion of the Early Intervention System review process, PRU shall be notified of the outcome of the process, including any remedial/corrective measures taken by the officer. If the Early Intervention System review process was triggered by a "false positive" as outlined above, such should be indicated to PRU.

⁵ This is a list of mandatory notifications to the MCPO under the Early Intervention System. This section does not list all mandatory notifications to this office, but solely outlines mandatory notifications for purposes of the Early Intervention System. A comprehensive list of all mandatory notifications to MCPO by local law enforcement agencies has been provided to all agencies within the county.

2. Domestic Violence Matters Involving a Law Enforcement Officer

- a. Any incident in which an officer is alleged to have committed an act of domestic violence or was the victim of domestic violence must be reported to the MCPO.⁶ Domestic violence matters must be reported regardless of whether or not complaints and/or a temporary or final restraining order has been issued, and regardless of where the underlying incident occurred (in or out-of-county)
- b. Domestic violence matters involving law enforcement officers employed by state or out-of-county agencies must be reported to both the officer's employing agency and the MCPO. Notification to the MCPO should include verification that the officer's employing agency has been notified about the domestic violence incident as well as state whether the officer has been disarmed pursuant to Attorney General Law Enforcement Directive 2000-3, "Seizure of Weapons from Municipal and County Law Enforcement Officers."

3. Off-Duty Contact with Law Enforcement Agency

- a. MCPO must be notified of any instance where an officer has off-duty contact with a law enforcement agency as a result of personal conduct. However, the following need not be reported to MCPO (a) contact as a result of minor motor vehicle/traffic violation that does not result in injury or MVC points; (b) contact in which an officer solely notifies a law enforcement agency about a welfare or public safety issue (ex., found a lost dog, reporting a downed wire, etc.). When in doubt about whether the matter should be reported to the MCPO, contact PRU for guidance.

To facilitate this, with this issuance of this order, it shall be the policy of the Matawan Police Department that all sworn police officers identify themselves as law enforcement officers to responding officers when their off-duty conduct results in a police interaction, regardless of whether or not complaints, a restraining order, or any other action is taken. Said identification will ensure that the responding police department is able to notify the involved officer's agency of said police contact. The involved off-duty police officer shall also be required to self-report the incident to the Office of the Chief of Police via the chain of command. A police officer's failure to make notification to the department and the responding agency may result in discipline in accordance with departmental policy and procedures. The required notification to the MCPO should be made by both the responding agency and the officer's agency.

⁶ The list of mandatory performance indicators in AG Directive 2018-3 includes "domestic violence investigations in which the officer is an alleged subject." To be clear, while being the victim of a domestic violence incident is not a mandatory performance indicator, the MCPO must still be notified anytime an officer is an alleged victim of a domestic violence matter as indicated above.

4. Officer has been Criminally Charged or Charged with a DWI

- a. The MCPO must be notified if an officer is criminally charged (by an agency other than the MCPO) or is charged with a Driving While Intoxicated offense.

5. Officer has been Sent for a Fitness for Duty Examination

- a. The MCPO must be notified anytime an officer has been sent for a fitness for duty evaluation, *regardless of the reason*.
- b. Whenever a local law enforcement agency sends any officer for a fitness for duty evaluation, the agency Chief Executive or his/her designee is required to submit to the physician, psychiatrist, or psychologist an itemized list of the documents it forwarded to him/her along with the documents it submitted. A copy of this itemized list must be maintained in the agency's internal affairs file and made available to the MCPO upon request.
- c. Fitness for duty reports, in their entirety, must be provided to the Monmouth County Prosecutor's Office for review and maintenance in our case file. As with all other files of a confidential and sensitive nature, fitness for duty reports are maintained in a locked, secure, confidential location, accessible only to the PRU staff.

6. Officer has been Disarmed

- a. The MCPO must be notified anytime an officer has been disarmed, *regardless of the reason*.
- b. *Prior to a local law enforcement agency rearming the officer*, the Monmouth County Prosecutor's Office must be provided with (1) a copy of the corresponding fitness-for-duty report (in its entirety); and (2) a written plan regarding the rearming of the officer, to include whether such would be unconditional or conditional, and any conditions proposed. The officer *shall not be rearmed* by the local agency until the MCPO has the opportunity to review the fitness-for-duty report and written plan and articulate any objections, concerns, or recommendations to the local agency.
- c. This procedure must be followed *anytime* an officer is disarmed *for any reason* and the agency is seeking his/her rearming. It is not limited to domestic violence incidents. Attorney General Law Enforcement Directive 2000-3, "Seizure of Weapons from Municipal and County Law Enforcement Officers," section III.F., explicitly provides that the County Prosecutor's Office, where a domestic violence incident occurs, determines whether or not weapons seized due to a domestic violence incident will be returned to a law enforcement officer; however, an officer may be disarmed for many reasons. In each and every instance, it is imperative that the MCPO be advised of the disarming and be consulted as outlined above, prior to any rearming, to ensure the health, safety and welfare of the public.

B. METHOD OF NOTIFICATION

Notifications identified above shall be made to PRU via email at mcpopru@mcponj.org. Where notification is required, all available information shall be provided, including any police reports and other documentation. Emergent matters, such as the arrest of an officer or his/her involvement in a domestic violence incident, shall be reported directly to the Monmouth County Prosecutor's Office Professional Responsibility and Bias Crime Unit by a command officer or a supervisor (at the direction of a command officer) calling 732-577-8700 and asking for the on-call PRU supervisor.

C. RESPONSIBILITIES OF PROFESSIONAL RESPONSIBILITY UNIT

It is the continuing responsibility of the Professional Responsibility and Bias Crimes Unit to open a file when the aforementioned notifications are made, review the incident, and investigate the matter further, if necessary.

V. ANNUAL REPORTING AND REVIEW

A. LOCAL AGENCY REPORTING TO MCPO

By January 15 of each year, the Office of Professional Responsibility (Internal Affairs Unit) Commander shall provide a letter to the Monmouth County Prosecutor's Office, Professional Responsibility and Bias Crime Unit Director, documenting that (1) The Matawan Police Department is in compliance with this policy and Attorney General Law Enforcement Directive 2018-3; and (2) documenting the following with respect to the *prior calendar year*:

1. Number of Early Intervention System audits conducted (must be at least one every six months, or two per year, but can be more);⁷
2. Number of officers who have triggered the Early Intervention System review process by having three separate performance indicators within a twelve-month period
3. Number of Early Intervention System notifications made to the Monmouth County Prosecutor's Office;⁸
4. Number of instances where remedial/corrective action was taken;
5. Number of instances in which there was a false positive;⁹ and
6. Number of instances which resulted in the Early Intervention System Review Process *and* also resulted in the commencement of an internal affairs investigation.

⁷ This reporting requirement *does not include* every time an officer's history is reviewed due to receiving a new complaint. This requirement *only includes* the number of system-wide Early Intervention system audits and must be at least two per year.

⁸ The number of Early Intervention System notifications to the MCPO should equal the number of officers who triggered the Early Intervention System review process.

⁹ The number of instances where remedial/corrective action was taken and number of false positives should equal the total number of officers who have triggered the Early Intervention System review process.